

1                   IN THE UNITED STATES DISTRICT  
2                   FOR THE WESTERN DISTRICT OF TENNESSEE  
3                   WESTERN DIVISION

---

4                   UNITED STATES OF AMERICA,

5                                   Plaintiff,

6                   vs.

NO. 21-cr-20192

7                   TEVIN RICHARDSON,

8                                   Defendant.

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9                                   MOTION TO SUPPRESS

10                                  BEFORE THE

11                                  HONORABLE THOMAS L. PARKER

12  
13                                  October 17, 2022

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19                   CATHERINE J. PHILLIPS, FAPR, RMR, CMRS  
20                                   OFFICIAL REPORTER  
21                                  FOURTH FLOOR FEDERAL BUILDING  
22                                  MEMPHIS, TENNESSEE 38103  
23  
24  
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A P P E A R A N C E S

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1 Monday  
2 October 17, 2022  
3

4 The Motion to Suppress in this case began on this  
5 date, Monday, October 17, 2022, at 10:30 a.m., when and where  
6 evidence was introduced and proceedings were had as follows:  
7

8 -----  
9 CASE MANAGER: All rise. The United States  
10 District Court for the Western District of Tennessee is now  
11 in session pursuant to adjournment. The Honorable Thomas L.  
12 Parker presiding. God save the United States and this  
13 Honorable Court. You may be seated.

14 THE COURT: Good morning.

15 MS. CORNEJO: Good morning, Judge.

16 MR. IRVINE: Good morning.

17 THE COURT: We have water again, so help  
18 yourself.

19 This is in the matter of the United States versus  
20 Tevin Richardson. Mr. Richardson is present in the courtroom  
21 with counsel, Mr. Irvine. Good morning.

22 We have Ms. Cornejo present on behalf of the  
23 Government.

24 MS. CORNEJO: Good morning, Your Honor.

25 THE COURT: Good morning.

1           So what I show is -- or what I'm expecting is a  
2 motion to suppress this morning. I have reviewed some  
3 material that the Government provided. It was -- at least  
4 what I reviewed, and there may have been more to it, but I  
5 reviewed an audio recording of a conversation between Special  
6 Agent Cogswell and the defendant. But that's all I've  
7 reviewed, other than the material that the parties have  
8 submitted, the written documents.

9           Mr. Irvine, what don't we start with you telling  
10 me -- as I understand it, there are kind of two steps to  
11 this: One, you're claiming that the statement lacked Miranda  
12 warnings, and therefore it should be suppressed. And once  
13 you suppress the statement, the search of the residence  
14 should also be suppressed, because it was based on consent  
15 that was obtained after the statement.

16           Is that fair? Or please help me where I'm --

17           MR. IRVINE: Clear on the first part --

18           THE COURT: Okay.

19           MR. IRVINE: -- not so clear cut on the second  
20 part.

21           THE COURT: Well, good. Well, then help me.

22           MR. IRVINE: Regarding issue one, he wasn't  
23 Mirandized. Agent Cogswell clearly intended to talk to him,  
24 he turned on his voice recorder, recorded him for some  
25 43 minutes, he wasn't Mirandized and so his statement should

1 be suppressed.

2           The law on issue two isn't as clear, because a  
3 consent to search can cure the lack of Miranda, but that  
4 consent has to be voluntary. And case law says that it's up  
5 to the Government to establish by a preponderance of the  
6 evidence that it was voluntary, given all the circumstances  
7 and things like custody is one issue, things like telling a  
8 defendant that the search is inevitable, it's going to go  
9 ahead and happen. All of those are factors that weigh into  
10 the Court's decision on whether or not it's voluntary.

11           THE COURT: But there are few bright lines, as I  
12 understand it, when it comes to that. I mean, obviously  
13 voluntary is the key. But some of those things, it's more of  
14 a sliding scale. Do you agree with that?

15           MR. IRVINE: I do agree with that.

16           THE COURT: Okay. Anything else you want to --

17           MR. IRVINE: I did not see any case law in which  
18 bright-line factors were applied, more just totality of the  
19 circumstances, and the Court has to make that decision.

20           THE COURT: Right. Okay. Anything else you want  
21 to tell me about the motion before we get started?

22           MR. IRVINE: Not before we start, Your Honor.

23           THE COURT: All right. Ms. Cornejo, anything you  
24 want me to know before we get started?

25           MS. CORNEJO: Your Honor, before we get started,

1 I would like -- Mr. Irvine and I have discussed the fact that  
2 he will not be making any objection as to making the audio  
3 and -- what else? -- as part of the exhibit.

4 MR. IRVINE: We had discussed marking three  
5 things, the audio, the transcript, and the consent to search.

6 MS. CORNEJO: Correct.

7 MR. IRVINE: And we can do that ahead of time or  
8 the consent to search will probably come up in testimony.

9 MS. CORNEJO: But either way, we do also have --  
10 I believe the transcript was also provided in our response.

11 THE COURT: It was.

12 MS. CORNEJO: I don't know if Your Honor had a  
13 chance to review that.

14 THE COURT: I just listened.

15 MS. CORNEJO: Okay.

16 THE COURT: But it's there if I need it. Right.

17 MS. CORNEJO: Okay. So I would like to admit  
18 those prior to beginning just so we have that all out.

19 THE COURT: Sure. Okay. If you want to bring  
20 those forward.

21 MS. CORNEJO: Yes, Your Honor.

22 THE COURT: Now, the audio, as I recall, was  
23 submitted with an email maybe. Or was that --

24 MS. CORNEJO: I emailed it, but then it didn't  
25 work because the file was too big. So I believe my legal

1 assistant brought an actual DVD, which I will also -- I have  
2 an extra copy, so we can make that an exhibit as well,  
3 Your Honor.

4 THE COURT: If you've got that, that would be  
5 helpful.

6 MS. CORNEJO: Thank you.

7 THE COURT: Now, you know what, I've got it. I'm  
8 sorry.

9 MS. CORNEJO: That's okay. We can have that --  
10 this one can be the one that's entered into evidence.

11 THE COURT: Perfect. Thank you.

12 MS. CORNEJO: And the only thing I want  
13 Your Honor to focus on -- are we doing opening statements or  
14 not?

15 THE COURT: It's up to you. That's why I said,  
16 anything you want me to know.

17 MS. CORNEJO: Yes. I will never take the  
18 opportunity to talk in court, Your Honor, as Your Honor well  
19 knows.

20 (Exhibit Nos. 1, 2 & 3 admitted.)

21 THE COURT: Did you mean what you just said or --  
22 you said I would never take the opportunity. You mean pass  
23 it by.

24 MS. CORNEJO: Pass, there you go.

25 Your Honor, on today's court date, the Government



1 is seeking that you deny counsel's motion to suppress  
2 evidence.

3 As Your Honor is very well aware, you have heard  
4 our -- you have read both counsel's motion and my response.  
5 And we will, obviously, be resting on all of those arguments  
6 that we made.

7 On today's court date, we will ask Your Honor to  
8 focus on the fact that the Government is not disputing the  
9 fact that the defendant was in custody on the date in  
10 question, which was November 12th of 2021. We're not  
11 disputing that, we're admitting to it. But when  
12 Agent Cogswell takes the stand, he will tell you that he in  
13 essence did not interrogate Mr. Richardson. If anything,  
14 what he was doing was having a conversation with  
15 Mr. Richardson. Mr. Richardson was asking Agent Cogswell  
16 questions about cooperation and things of that nature.

17 Nonetheless, Your Honor, it is our position that  
18 even if Your Honor believes that any of those statements that  
19 came during that conversation were unconstitutional, we still  
20 believe that the consent in this case is voluntary.

21 Your Honor stated that he did hear the audio of  
22 Agent Cogswell's conversation with the defendant.  
23 Agent Cogswell was polite, he was courteous, he answered all  
24 of his questions. I'm sure in your experience you've heard  
25 very different sorts of interviews where there's yelling and

1 screaming and threats. No threats were made. Agent Cogswell  
2 didn't have a gun pointing at him. So there's a lot of those  
3 things that Your Honor needs to take into account.

4           However, something that the defense fails to  
5 acknowledge, which it is the Government's position is very  
6 important, in this case even if Your Honor says, okay,  
7 Richardson's consent was not voluntary, we still have Malia  
8 Niles. She gave consent. She signed the consent form.  
9 She's not a party in this case. And there is nothing to  
10 dispute the fact that she had actual and apparent authority  
11 to grant consent.

12           So despite all the factors, and, of course, the  
13 Government will submit Agent Cogswell to testify,  
14 specifically as to the consent issues, it is our position  
15 that even if Your Honor agrees with counsel, there is no  
16 getting over the fact that Malia Niles, girlfriend -- I don't  
17 know if now they're married, but they're clearly together.  
18 There's pictures all over the apartment that you'll see, they  
19 call themselves The Richardsons, and she signed the Consent  
20 to Search form herself as well.

21           So at the end of the day, Your Honor, we will be  
22 asking that you deny counsel's motion to suppress.

23           THE COURT: Okay. I'm ready if you are.

24           MS. CORNEJO: All right. We would like to call  
25 Agent Cogswell to testify please.

1 (AGENT CHASE COGSWELL duly sworn.)

2 THE WITNESS: I do.

3 CASE MANAGER: Thank you. You may have a seat at  
4 the witness stand.

5 THE WITNESS: Yes, sir.

6 Good morning, Your Honor.

7 THE COURT: Good morning.

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TESTIMONY OF AGENT CHASE COGSWELL

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AGENT CHASE COGSWELL,

was duly sworn testified as follows:

DIRECT EXAMINATION

BY MS. CORNEJO:

Q. Good morning, Agent Cogswell. Can you please spell and state your name for the court reporter.

A. Yes. Chase Cogswell. C-H-A-S-E C-O-G-S-W-E-L-L.

Q. Agent Cogswell, were are you employed and in what capacity?

A. At this time I was employed as a special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives, or ATF.

Q. And how long have you been employed by ATF?

A. Since 2018.

Q. Prior to your employment with ATF, did you work in any other law enforcement capacity?

A. Yes, I worked for less than a year for Homeland Security Investigations. Prior to that I was a Savannah, Georgia, police officer, including being a U.S. Marshals Task Force officer for several years. Prior to that, I was a correctional officer in Virginia.

Q. Agent Cogswell, can you briefly tell us did you begin an investigation in January of 2020 involving a gang, the Unknown Vice Lords?

TESTIMONY OF AGENT CHASE COGSWELL

13

1 A. Yes.

2 Q. And once you began this investigation, did you become  
3 aware of a subject or a man named Tevin Richardson?

4 A. Yes.

5 Q. And do you see Tevin Richardson in court today?

6 A. Yes. He's the gentleman in the red jumpsuit with a  
7 mask on.

8 MS. CORNEJO: Your Honor, if the record could  
9 reflect an in-court identification of the witness -- or of  
10 the defendant by the witness.

11 THE COURT: Any objection?

12 MR. IRVINE: No, Your Honor.

13 THE COURT: Without objection, the record will  
14 reflect that he's identified Mr. Richardson. Yes, ma'am.

15 MS. CORNEJO: Thank you.

16 BY MS. CORNEJO:

17 Q. Now, approximately, August of 2021, was Mr. Richardson  
18 indicted?

19 A. Yes.

20 Q. And what was it for?

21 A. 922(g)(1), which is possession of a firearm by a  
22 convicted felon.

23 Q. After he was indicted, did you obtain an arrest  
24 warrant, Agent Cogswell?

25 A. Yes.

## TESTIMONY OF AGENT CHASE COGSWELL

14

1 Q. And after you obtained the arrest warrant, when did  
2 you effectuate that arrest warrant?

3 A. November of 2021, November 12th.

4 Q. Specific -- yes, November 12th. Thank you.

5 And once you -- can you just tell us how you and your  
6 team effectuate arrest warrants specifically.

7 A. Yes. This day I was working with the U.S. Marshal  
8 Service, so a team of U.S. Marshals. I was there in support  
9 of their arrest of Mr. Richardson.

10 When they're doing it, they basically -- they take the  
11 reins on it, so to speak, so I was out on perimeter on the  
12 outside. They made contact with Ms. Niles at the door. And  
13 I went up to assist them with the search for Mr. Richardson  
14 once they had made contact with her.

15 Q. You just referenced Ms. Miles [sic]. Do you know who  
16 Malia Miles is?

17 A. Yes. Niles with an N. And that's Mr. Richardson's  
18 girlfriend.

19 Q. Okay. And can you tell us what happened once you went  
20 inside the residence.

21 A. Yes. So I already pretty much knew that he lived  
22 there. I had spoken with Ms. Niles on the phone previously.  
23 There was every indication they were living together. The  
24 car that he had been seen in previously was parked outside.  
25 So when we went in, saw more indicia that they were living

## TESTIMONY OF AGENT CHASE COGSWELL

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1 together, including his picture on the wall. A big placard  
2 that said The Richardsons on the wall.

3 While searching for Mr. Richardson, there was a loose  
4 round of ammunition on the floor between the bed and the  
5 nightstand. And when looking underneath the bed to see if he  
6 was hiding underneath the bed, there was a magazine  
7 containing ammunition up in the bottom of the box spring.

8 Q. Let me just take you back a little bit. You said that  
9 your observed loose ammunition on the floor?

10 A. Yes. There was one loose round on the floor, just to  
11 the right of the bed, between the bed and the nightstand.

12 Q. And based on your observations, could you tell whose  
13 bedroom that was?

14 A. Yes, that was Malia and Tevin Richardson's.

15 Q. Based on your investigation, did you know whether  
16 Mr. Richardson was legally able to be in possession of  
17 firearm ammunition?

18 A. He's not. I'm aware he's a convicted felon.

19 Q. Now, can you tell us a little bit about -- you said  
20 you looked under the mattress. Why did you do that?

21 A. Because people hide under mattresses. We had actually  
22 had his -- it was his sex offender manager reach out to him  
23 that morning and had spoken to him on the phone. And when I  
24 called the same phone number that they had spoken to him on,  
25 a phone on the table rang. It was saved as -- my number was

## TESTIMONY OF AGENT CHASE COGSWELL

16

1 saved as ATF dude, because I had spoken to him previously.  
2 So that was just further leading that he was there hiding  
3 somewhere. It was just a matter of where, so we were looking  
4 for him.

5 Q. So at this point when you saw the loose ammunition on  
6 the floor and lifted up the mattress, had you found  
7 Mr. Richardson at this point?

8 A. No.

9 Q. And can you tell us what happened if and when he was  
10 found.

11 A. Yes, he was -- he eventually came out. He was in the  
12 attic. He eventually came out from hiding in the attic and  
13 was arrested.

14 Q. And who arrested him?

15 A. The marshals.

16 Q. Okay. Now, after he was arrested, what happened next,  
17 Agent Cogswell?

18 A. I informed his girlfriend -- his girlfriend and I  
19 think it was two kids, it was either one or two had gone --  
20 they knew the neighbors in the apartment next door, so they  
21 were over there, in there just to be inside to be warm. So I  
22 informed her that he had been arrested, and then I went over  
23 to speak to Mr. Richardson.

24 Q. Okay. And did you Mirandize the defendant?

25 A. No.



TESTIMONY OF AGENT CHASE COGSWELL

17

1 Q. Why did you not Mirandize him?

2 A. I was going to if I was going to question him later.  
3 But a lot of time -- people don't know the process when  
4 they're arrested or when they're dealing, especially with  
5 federal law enforcement. A lot of people never have before,  
6 and so there's a lot of questions about what's going on,  
7 what's next. So that's where we were at that point.

8 Q. Agent Cogswell, you've had a chance to review --

9 MS. CORNEJO: Your Honor, what is the exhibit  
10 numbers for the audio and the transcript?

11 THE COURT: All right. Let's look.

12 CASE MANAGER: Transcript is Number 1.

13 THE COURT: The transcript is 1.

14 CASE MANAGER: The audio/DVD is number 3.

15 THE COURT: The audio is number 3. And the  
16 Consent to Search is Number 2.

17 BY MS. CORNEJO:

18 Q. So, Agent Cogswell, you have had a chance to review a  
19 transcript of your conversation with Mr. Richardson on  
20 November 12th of 2021; correct?

21 A. Yes, I recorded the conversation and I reviewed the  
22 transcript.

23 Q. And, in addition, you also have reviewed Exhibit  
24 Number 3, which is the actual audio that you took of the  
25 conversation.

## TESTIMONY OF AGENT CHASE COGSWELL

18

1 A. Yes.

2 Q. And can you tell us why you recorded that?

3 A. Variety of reasons. Protects you from allegations of  
4 misconduct. And sometimes people make statements, such as in  
5 this case where even without questioning people say things.

6 Q. Okay. Now, specifically, where did this conversation  
7 occur?

8 A. In Mr. Richardson's living room.

9 Q. And can you, without telling us word for word, can you  
10 just tell us what was the nature of this conversation?

11 A. It was about -- it's a larger gang case, as you've  
12 expressed, it started a long time ago. And it was about his  
13 opportunity to cooperate in the larger case, what his options  
14 were, and what the future held, how he and his family could  
15 remain safe should he consider to cooperate.

16 Q. When you say it was a larger case, had you been  
17 investigating violent acts committed by the Unknown Vice  
18 Lords?

19 A. Yes.

20 Q. And, based on your investigation, is the defendant a  
21 part of this organization?

22 A. Yes.

23 Q. And did you answer his questions that he had for you?

24 A. I did.

25 Q. After you observed the loose round of ammunition, did

TESTIMONY OF AGENT CHASE COGSWELL

19

1 you contact the United States Attorney's Office?

2 A. Yes.

3 Q. And did you ask whether you would be able to obtain a  
4 search warrant based on probable cause?

5 A. Yes. I provided the facts and said, what do you think  
6 about this set of facts regarding if we should apply for a  
7 search warrant for this apartment.

8 Q. And were you given permission to start drafting a  
9 search warrant?

10 A. Yes.

11 Q. Okay. Did you inform the defendant of that?

12 A. Yes. I told him that I could apply for a search  
13 warrant. The Judge may or may not sign it. I believed there  
14 was probable cause, but it was up to the Judge.

15 Q. Okay. And when you were having this conversation with  
16 the defendant, were you alone in the room with him?

17 A. I can't remember. I know he asked to speak privately.  
18 I can't remember if somebody stayed with me or not.

19 Q. Were you pointing a gun at Mr. Richardson while he was  
20 talking to you?

21 A. No.

22 Q. Did you make any threats to him?

23 A. No, not at all.

24 Q. And how would you characterize just the overall nature  
25 of the conversation between you and the defendant?

## TESTIMONY OF AGENT CHASE COGSWELL

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1 A. It was relaxed. He had some questions and I had some  
2 answers. He had questions about the booking process, so I  
3 called one of the marshals to ask him questions about if he  
4 would go to 201 or what jail he would be going to.

5 Like I said, a lot of people just don't know the  
6 process. I do, but you can't take for granted that everybody  
7 does because they don't.

8 Q. At some point did Ms. Niles come into the living  
9 room --

10 A. Yes, she did.

11 Q. -- and had a conversation with both you and the  
12 defendant?

13 A. Yes.

14 Q. And can you tell us were you able to obtain consent to  
15 search the residence from Ms. Niles?

16 A. Yes. Both she and Mr. Richardson gave consent, and  
17 they signed a Consent to Search form.

18 Q. And after that Consent to Search form was signed, what  
19 did you and your fellow agents do next?

20 A. Went back, recovered the firearm and the ammunition,  
21 and searched the rest of the apartment and recovered some  
22 more ammunition and firearm accessories and some marijuana.

23 Q. Now, specifically, Exhibit 2, which has already been  
24 admitted into the record, that is a signed Consent to Search  
25 form filled out by yourself -- or signed by yourself, by

TESTIMONY OF AGENT CHASE COGSWELL

21

1 Mr. Richardson, and Ms. Niles; correct?

2 A. Yes. And another agent that was present, Special  
3 Agent Bullock.

4 Q. And that's Milan Bullock, B-U-L-L-O-C-K?

5 A. Yes.

6 THE COURT: How do you spell the first name?

7 MS. CORNEJO: M-I-L-A-N.

8 BY MS. CORNEJO:

9 Q. In addition to getting the consent to search the  
10 residence, did you also obtain consent to search any other  
11 part of their property?

12 A. Several vehicles that were associated with them  
13 outside, I believe it was three vehicles. There was a  
14 Hyundai Elantra, a pickup truck, and something else. Nothing  
15 was recovered out of the cars.

16 Q. Why did you have both Ms. Niles and Mr. Richardson  
17 sign the Consent to Search form?

18 A. They both lived there.

19 Q. If Ms. Niles or Mr. Richardson would not have signed a  
20 Consent to Search form, what would you have done?

21 A. Applied for a search warrant.

22 MS. CORNEJO: Your Honor, may I have a moment,  
23 please?

24 THE COURT: Yes, ma'am.

25 BY MS. CORNEJO:

TESTIMONY OF AGENT CHASE COGSWELL

22

1 Q. Agent Cogswell, I'm showing you a photograph. Can you  
2 tell me if you recognize that photograph.

3 A. Yes, that's the round of ammunition that was on the  
4 floor. The loose round I referenced.

5 Q. Okay. Is that the first loose round you saw?

6 A. Yes.

7 Q. And did you move anything to take this photograph?

8 A. No.

9 Q. Actually, did you take this photograph?

10 A. Yes.

11 Q. Okay. And you said you did not move anything;  
12 correct?

13 A. Correct.

14 Q. Okay. Does this loose round truly and accurately  
15 depict the way it looked to you on November 12th of 2021?

16 A. Yes.

17 MS. CORNEJO: Your Honor --

18 THE COURT: You mean the photograph?

19 MS. CORNEJO: Yes.

20 THE COURT: Does the photograph accurately  
21 reflect it?

22 MS. CORNEJO: Yes. I apologize.

23 THE WITNESS: Yes, I do.

24 THE COURT: Just making sure the record's clear.

25 MS. CORNEJO: Thank you, Your Honor. I would

TESTIMONY OF AGENT CHASE COGSWELL

23

1 like to avoid any appeals if possible.

2 Your Honor, I would be seeking leave to enter  
3 this into evidence as an exhibit and publish.

4 THE COURT: Yes, ma'am. Exhibit Number 4 will be  
5 admitted. It's a photograph.

6 (Exhibit No. 4 admitted.)

7 THE COURT: Here, we can lower the lights a  
8 little bit, plus your monitor is there.

9 BY MS. CORNEJO:

10 Q. Can you circle, Agent Cogswell, where the loose round  
11 ammunition is.

12 A. (Indicating.)

13 Q. Thank you.

14 And then what is next to the ammunition?

15 A. This is a nightstand, and the bed was over this way  
16 slightly out of sight. That may be the sheet from it, I'm  
17 not sure.

18 Q. All right. And you observed this prior to obtaining  
19 consent to search; correct?

20 A. Yes.

21 MS. CORNEJO: One moment, Your Honor, I just want  
22 to make sure...

23 Your Honor, at this point I tender the witness.  
24 Thank you.

25 THE COURT: Cross-examination?

TESTIMONY OF AGENT CHASE COGSWELL

24

MR. IRVINE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. IRVINE:

Q. Good morning, Agent Cogswell.

A. Good morning.

Q. I want to talk to you first about you talking to Mr. Richardson. Okay?

A. Yes, sir.

Q. So the marshals went in and apprehended him, I believe, in the attic; correct?

A. Yes.

Q. And then they brought him down, put him on a couch, and handcuffed him; correct?

A. Yes.

Q. And had you already been in the house?

A. Yes.

Q. Okay. So the first thing we see on the transcript, Exhibit 1, reads Male Voice 1. That's you; correct?

A. I'd have to hear the context, but I believe it is.

Q. Okay. November 12, 2021, 10:57 a.m., Special Agent Cogswell going in to speak with Tevin Richardson, 6619 Rolling Brook, Apartment 4.

A. Yes, that's my voice.

Q. And then you say, what's going on, man.

A. Yes.



TESTIMONY OF AGENT CHASE COGSWELL

25

1 Q. Okay. So that we're clear, you intended to talk to  
2 Mr. Richardson.

3 A. Yes.

4 Q. You wanted to get his consent to search the apartment.

5 A. Yes.

6 Q. And you wanted to talk to him about the facts of your  
7 investigation.

8 A. I wanted to later. But I didn't at that point intend  
9 to ask him questions or try to get information regarding the  
10 case we were investigating. I wanted to give him the  
11 opportunity to ask questions and help him understand what was  
12 going on.

13 Q. Well, but you do discuss the fact that Ricky Rogers  
14 and Hell Rell were already in custody; correct?

15 A. Yes.

16 Q. And you've been talking to other co-conspirators?

17 A. Yes.

18 Q. And you're asking him to tell you the truth about what  
19 went on out there?

20 A. I don't recall asking him to go ahead and start  
21 telling me the truth about what went on. I think I told him  
22 if we're going to talk, it needs to be the truth. But I  
23 didn't actually ask him to start talking about the facts of  
24 the case.

25 Q. Well, fair enough. Let's --

TESTIMONY OF AGENT CHASE COGSWELL

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1 MR. IRVINE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. IRVINE:

4 Q. If you would, turn to page 9 of the transcript.

5 THE COURT: And, by the way, I'm looking at it as  
6 well.

7 MR. IRVINE: Thank you, Your Honor.

8 THE WITNESS: Yes, sir, I'm there.

9 BY MR. IRVINE:

10 Q. And starting lines 5 through 10.

11 A. You want me to read it?

12 Q. If you would.

13 A. "This one, too, but it will happen again. You keep  
14 running with that group, it's going to happen. But if you  
15 want to talk to me honestly about what's going on, I mean,  
16 the way Hump and Lee were killed. The only way I could be to  
17 you, and Rell and Ricky's in custody, and Ray Ray and Yeyo  
18 and Chucky D and all those other folks, is by people taking  
19 to me."

20 Q. So you are wanting to elicit information from  
21 Mr. Richardson.

22 A. Well, I was telling him that the way I was there  
23 talking to him is because other people were talking to me.  
24 So I hadn't actually asked him about the case. I just wanted  
25 him to understand in his gang there's a rule of never talk to

## TESTIMONY OF AGENT CHASE COGSWELL

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1 police, and that nobody's following that rule. So I was  
2 trying to help him get over that bump of cooperation like  
3 other people had.

4 Q. Okay. And I think if we go down to, say, lines 16  
5 through 22, if you could review that and read it, please.

6 A. Yes, sir. Male Voice 1: People start talking,  
7 telling me where to look. I didn't know where to look.  
8 People tell me where to look. Hey, you should look here.  
9 That's what I do, follow the lead. But if you want to  
10 cooperate with me, I want that. But if you want to try to  
11 trick me or say you were in Fayette County and don't know  
12 nothing about it, let's not. All right?

13 THE COURT: All right, real quick. So that's  
14 you; is that right?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. So Male Voice 1 is  
17 Mr. Cogswell.

18 MR. IRVINE: Mr. Cogswell, yes, sir.

19 THE COURT: Okay.

20 BY MR. IRVINE:

21 Q. And I don't want to beat a dead horse here, but he was  
22 in custody.

23 A. Yes.

24 Q. He was handcuffed.

25 A. Correct.

## TESTIMONY OF AGENT CHASE COGSWELL

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1 Q. You turned on your recorder --

2 A. Yes.

3 Q. -- to memorialize you talking to him.

4 A. Yes.

5 Q. It wasn't -- to be clear, it wasn't spontaneous  
6 utterances made by Mr. Richardson. I mean, that was the  
7 point of the recording, it was an interview.

8 A. I would say that the statements about where the gun  
9 were was a spontaneous utterance. At that point I was -- I  
10 believe I said something along the lines of, I can see  
11 ammunition in the box spring. And he said, you need to look  
12 a little further. So I would describe that as spontaneous  
13 utterance if that's what we're talking about.

14 Q. Okay. And we'll cover that in a few minutes. I  
15 just --

16 A. Okay.

17 Q. We'll get to it.

18 A. Okay.

19 Q. Let's move on from the recording and let's talk about  
20 the first two things you found. You had an arrest warrant,  
21 right, not a search warrant?

22 A. Correct.

23 Q. And because Ms. Niles told you that he was gone and  
24 you didn't believe him [sic], you were going to search the  
25 apartment to try to find him.

TESTIMONY OF AGENT CHASE COGSWELL

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1 A. Yes.

2 Q. And you went in what you believed to be their bedroom.

3 A. Yes.

4 Q. And you saw a bullet in between the bed and  
5 nightstand.

6 A. Yes.

7 Q. Now, you told us earlier that you looked under the bed  
8 to see if Mr. Richardson was hiding under there.

9 A. Yes.

10 MR. IRVINE: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. IRVINE:

13 Q. I'll pass you this. Do you recognize that?

14 A. Yes, that's the nightstand to the right of the bed,  
15 between the bed and the closet.

16 Q. Okay. And that's a picture you took.

17 A. Yes.

18 Q. Okay. Now, I want to draw your attention to the  
19 actual bed, not the nightstand.

20 A. Yes, sir.

21 Q. That's a box spring lying on the ground; correct?

22 A. I can't tell if it's on the ground or on a frame in  
23 that picture.

24 Q. Well, it's important, so let's take a look at it. Do  
25 you see any bed frame there?

## TESTIMONY OF AGENT CHASE COGSWELL

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1 A. I can't tell. I don't, but I also know there's bed  
2 frames where they don't stick out much. I can't tell if that  
3 black line along the bottom is a frame or not.

4 THE COURT: You want to put it on the ELMO?

5 MR. IRVINE: Yes, that would be great. And why  
6 don't we mark that as the next exhibit.

7 THE COURT: All right. Exhibit Number 5 is the  
8 photograph.

9 (Exhibit No. 5 admitted.)

10 BY MR. IRVINE:

11 Q. Since we're all looking at it, that's like an  
12 electrical cord there on the ground; right?

13 A. I can't tell if that's a cord or if that's a ripped up  
14 part of the mattress. I'm not sure.

15 Q. Right there where I've put a dot, that's the box  
16 spring; right?

17 A. Yes.

18 Q. Okay. And it's pretty clear that box spring's laying  
19 on the ground; right?

20 A. There's a black line along. I can't tell if that's a  
21 little shadow or if that's a bed frame. I'm just not sure.  
22 I don't know if there's another angle photo. But I can't  
23 tell for certain either way in that picture.

24 Q. Let's see if there's a better one.

25 I'm afraid that's the best we have.

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1 But you don't have any specific recollection of  
2 whether or not that was on the floor or on a frame?

3 A. I don't. I know even if it was on the floor, we have  
4 to lift it. While working with the marshals, I've found  
5 fugitives inside washing machines with the door shut, I mean  
6 all kinds of places. People get very small. So if it's  
7 anywhere that can hide a person, you really have to check.

8 Q. Well, you would agree with me that a grown man can't  
9 hide in a box spring. I mean, there are springs in there.

10 A. They can hide under a box spring, or between them very  
11 easily. I've seen it a hundred times.

12 Q. A box spring that's laying on the floor?

13 A. Yes.

14 Q. So once he's in custody and you're talking to him, and  
15 one of the first things you said is that Ms. Niles did not  
16 want you to search the apartment.

17 A. Correct.

18 Q. So you had asked her for consent and she had told you  
19 no.

20 A. I can't remember if we asked to search for him or to  
21 search for evidence, I can't recall.

22 Q. Okay.

23 A. It sounds that way, but I just can't remember for  
24 sure.

25 Q. That's all right. But you do remember her saying that

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1 you couldn't search the apartment.

2 A. Yes.

3 Q. And so you were going in to try to convince  
4 Mr. Richardson to convince her to let you search the  
5 apartment.

6 A. It was -- I wanted to tell him the options. Again,  
7 people don't know the process, I do, so I was informing him  
8 that we could apply for a search warrant. It would displace  
9 her for a couple of hours. She would be comfortable and  
10 taken care of, but she would be displaced for a little while.  
11 No big deal either way.

12 Q. Well, and I want to talk to you about that. If you  
13 want to look at -- I'm on page 2 of your transcript. And I  
14 won't have you read the whole thing, but at one point you do  
15 say, you're welcome to consent, no pressure, you can talk  
16 amongst yourselves. Or if you want, we can apply for a  
17 search warrant. So you do say those things.

18 But then, if you look down to the next paragraph, but  
19 we are going to search, given the round of ammo on the ground  
20 and the magazine up inside the box springs. So we're going  
21 to go ahead and look for it. All right.

22 Now, I'm having trouble reconciling those two things.

23 Were you telling him that you were going to search the  
24 apartment no matter what?

25 A. The main goal, the whole conversation, I think I've



## TESTIMONY OF AGENT CHASE COGSWELL

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1 said it about five times, was, I'm going to apply. A judge  
2 may or may not sign it.

3 So I think that's the message he clearly got, because  
4 I said it over and over again.

5 Q. But, here, you're telling him you're going to search.  
6 We've got to search because of that ammo.

7 A. Yes, sir.

8 Q. Okay. And then I want the record to be clear, I'm not  
9 suggesting you said this, but one of those marshals that was  
10 there basically tells him that Ms. Niles and the children --  
11 and I'm reading page 2, line 24 -- they're not going to be  
12 able to come back in here and get clothes on or get  
13 comfortable until we get all this situated. So all you're  
14 doing is delaying the inevitable.

15 And I appreciate you tried to come behind him and  
16 clean that up a little. Is that fair?

17 A. Yes, I did. I wanted to make it clear that I was in  
18 charge and that's now how things were going to go.

19 Q. Right, and I appreciate that. But you would agree  
20 with me that that's -- Mr. Richardson's getting mixed  
21 messages at the very least.

22 A. I would say very briefly. But he understood and we  
23 did take care of her and the kids. So he knew pretty quickly  
24 we weren't there to stick them out in the cold with no  
25 diapers.

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1 Q. But that was the gist of what that other agent was  
2 saying.

3 A. I'll have to read what he said again. They're not  
4 going to be able to come back in here and get clothes on or  
5 get comfortable until we get all that situated, so all you're  
6 doing is delaying the inevitable.

7 Yeah, the gist was that they'd be uncomfortable and  
8 that it was going to happen anyway.

9 Q. Okay.

10 A. That's how I would take it.

11 Q. And I think Exhibit 1, which is the audio, you  
12 actually recorded 43 minutes with Mr. Richardson; correct?

13 A. Sounds correct.

14 Q. Okay. And in that 43 minutes he never gave consent.

15 A. Correct.

16 Q. And in 43 minutes we don't hear Ms. Niles give  
17 consent.

18 A. Correct.

19 Q. At what point did you decide to turn the recorder off?

20 A. I believe I went outside to take a phone call. I  
21 can't remember, but I shut it off. And I think I actually  
22 sent somebody to go get a Consent to Search form. And it was  
23 clear, when he started telling me you need to look a little  
24 further in that box spring, that we were on the way to a  
25 consent to search.

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1 Q. I'm glad you went there, because I was going to ask  
2 you about that.

3 So when you search, you're doing a symptomatic search;  
4 correct?

5 A. Yes.

6 Q. You search one place, you look for stuff, you clear  
7 it, then you move on to the next place.

8 A. I do.

9 Q. And in this case, you had lifted up the box springs  
10 and looked kind of under where there was a hole in the bottom  
11 of the box springs?

12 A. Yes.

13 Q. And you found a 9MM magazine for a Glock.

14 A. I don't recall if it was a Glock magazine, but there  
15 was a pistol magazine with ammunition.

16 Q. Okay. And that's all you discovered the first time.

17 A. That's all I saw, yes.

18 Q. Okay. Then you were asking him about his guns,  
19 whether or not he has long guns in the apartment. And he  
20 tells you that he's got one gun for protection. Correct?

21 A. Yes, he told me that.

22 Q. And you sent you back to where you had already looked,  
23 a spot that you had already cleared; correct?

24 A. Well, I had cleared it for people but I hadn't  
25 searched for evidence. So I don't -- like you said, I don't

## TESTIMONY OF AGENT CHASE COGSWELL

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1 think a person could go through a hole, six inches wide,  
2 inside a box spring, so I didn't get down and shine my  
3 flashlight all the way down in there. I just lifted the box  
4 spring, saw the ammunition and no person and put it back  
5 down. So it hadn't been cleared of evidence, it had been  
6 cleared of people. Because the search was to go back and try  
7 to recover evidence.

8 Q. Had you gotten the magazine out at that time?

9 A. No, I left it.

10 Q. You left it in there when you were talking to him?

11 A. Yes.

12 Q. And you actually said, I think there's a gun in the  
13 house. This is on page 22, lines 7 through 10.

14 A. It's not -- but the live round, the magazine in top of  
15 the dresser. And y'all, I think, he said, already got the  
16 other one out of the box spring.

17 Q. Does that refresh your memory, was the magazine taken  
18 out of the box springs?

19 A. Let me read it again.

20 THE COURT: Where are you reading from?

21 MR. IRVINE: I'm at line 22 -- or, excuse me,  
22 page 22, lines 7 through 10 -- or 7 through 14 is the  
23 conversation.

24 THE WITNESS: So that's -- Male Voice 2 is going  
25 to be Mr. Richardson, so that's not me talking. Up above I'm

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1 discussing where on other search warrants I found weapons  
2 hidden -- just for context I said, but I do have to look  
3 around to make sure, like the weapons used at Goodwill  
4 Village aren't here, because I'd hate for you to say, yeah,  
5 one is here and be playing me on the other side, but there's  
6 another one. You know what I mean?

7 So I was expressing if he told me where one was,  
8 I'd still have to search because there could be another gun  
9 that was used in the shooting or murder that I would also  
10 need to search for.

11 And he said, it's not. But the live round, the  
12 magazine in the top of the dresser, and y'all -- I think he  
13 said he already got the other one out of the box spring.

14 So that's him saying, I think he got the other  
15 one out of the box spring.

16 BY MR. IRVINE:

17 Q. Okay. And you remember that it was still there.

18 A. That we left it, yes, sir. Generally, we leave things  
19 in place, and then apply for a search warrant and it's just  
20 still sitting there.

21 Q. Well, what I want to hone in on, is Male Voice  
22 Number 1, that's you saying, yeah, there was just a mag in  
23 there.

24 A. Yes.

25 Q. And then Mr. Richardson tells you, you probably going

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1 to have to look up in there.

2 A. Yes.

3 Q. So he's telling you to look further.

4 A. Yes.

5 Q. And you will find the gun.

6 A. That's how I took it.

7 Q. And would you agree with me that the gun was found  
8 because of his statements made to you?

9 A. I think it would have been found otherwise. He told  
10 us something we pretty much already knew that there was a  
11 gun.

12 No, I wouldn't agree that it was found because of his  
13 statement. I think it would have been found anyway.

14 Q. Well, that's --

15 A. He did tell us where it was though.

16 Q. That requires a little speculation; correct?

17 A. I think it's speculation either way. I think it would  
18 have been found either way.

19 Q. And it was a spot that you had already searched and  
20 you hadn't found the magazine.

21 A. I had not searched the box spring for evidence. I'd  
22 only lifted it to search for a person.

23 MR. IRVINE: Okay. Agent Cogswell, thank you for  
24 your time.

25 THE WITNESS: Thank you, sir.

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1 THE COURT: All right. Redirect?

2 MS. CORNEJO: Yes.

3 REDIRECT EXAMINATION

4 BY MS. CORNEJO:

5 Q. Agent Cogswell, can you explain to us that are not  
6 involved in law enforcement, what is the difference between  
7 searching for people and searching for evidence? You made  
8 that distinction during cross-examination.

9 A. Yes, ma'am. People are much larger, so if you're  
10 searching for a fugitive, you can't look in a small drawer  
11 because they're not going to be in there. Like I said, I  
12 will look in a washing machine, because people can fold up  
13 very small when they wanted to avoid capture, attics, under  
14 mattresses, under beds. There's reasonable places that a  
15 person can be.

16 I wouldn't find it reasonable if a hole is six-inches  
17 wide and I can see a magazine in there to think that  
18 Mr. Richardson crawled through that hole, because it's just  
19 too small.

20 Q. I want to discuss a bit the whole whether the box  
21 spring was on the floor or not.

22 You stated that you have -- that is a place that  
23 someone could hide, underneath; correct?

24 A. Yes. I believe Mr. Richardson's a little bit bigger  
25 now, but I think he was around 135 pounds at the time.

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1 Q. Okay.

2 A. So he was pretty small.

3 Q. All right. Were there any blankets or pillows over  
4 the bed?

5 A. There were some blankets, yes.

6 Q. I'm going to show you a different angle.

7 Agent Cogswell, I am --

8 MS. CORNEJO: May I approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 MS. CORNEJO: Thank you.

11 BY MS. CORNEJO:

12 Q. Agent Cogswell, I'm showing you another photograph.

13 Can you please review that photograph and tell me if you  
14 recognize what that is of.

15 A. That's the magazine that was in bottom of the box  
16 spring.

17 Q. And did you take this photograph on November 12th of  
18 2021?

19 A. Yes.

20 Q. And does it truly and accurately depict the way that  
21 that room or that specific piece of evidence looked on that  
22 date?

23 A. Yes.

24 MS. CORNEJO: Your Honor, I would seek leave to  
25 enter this as an exhibit into evidence and publish.



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1 THE COURT: Yes, ma'am.

2 MS. CORNEJO: Thank you.

3 THE COURT: Exhibit Number 6 is a -- that is  
4 Number 6; right?

5 CASE MANAGER: Yes, Your Honor.

6 THE COURT: Number 6 will be another photograph.

7 (Exhibit No. 6 admitted.)

8 BY MS. CORNEJO:

9 Q. Agent Cogswell, can you please circle the evidence  
10 that you saw.

11 A. (Indicating.)

12 Q. Okay. And did you make -- do you see a tear in that  
13 fabric?

14 A. Yes.

15 Q. Did you do that tear?

16 A. No.

17 Q. Is that exactly how you saw the evidence when you  
18 lifted the box spring?

19 A. Yes.

20 Q. I want to discuss a little bit the beginning of the  
21 conversation that you had with Mr. Richardson. I would like  
22 to play a little bit of Exhibit Number 1 just so that we can  
23 kind of all see -- I want to see if that's how you remember  
24 the conversation going.

25 THE COURT: I believe the audio is Number 3.

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1 MS. CORNEJO: Three. Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 BY MS. CORNEJO:

4 Q. So I am beginning just right from the beginning. I  
5 just want you to listen to a little bit and let me know if  
6 this is --

7 (Audio played.)

8 MS. CORNEJO: For the record I stopped at marker  
9 1 minute and 12 seconds.

10 BY MS. CORNEJO:

11 Q. So is that the beginning of the conversation you had  
12 with Mr. Richardson?

13 A. Yes.

14 Q. Mr. Irvine brought up a situation where someone else  
15 made a comment to Mr. Richardson about the kids being outside  
16 with Malia and it being cold. Do you remember that?

17 A. Yeah. I don't remember if he said anything about her  
18 being cold, but they just said that she wouldn't be able to  
19 get back in the apartment and be comfortable, I think.

20 Q. And did you get items for the children?

21 A. Yes.

22 Q. And what specifically did you get?

23 A. I don't remember. Usually whatever they ask for,  
24 usually it's like diapers and a blanket and whatever they  
25 need.

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1 MS. CORNEJO: Okay. I have nothing further.  
2 Thank you.

3 THE COURT: All right. Special Agent Cogswell,  
4 let me ask just a couple of quick questions.

5 THE WITNESS: Yes, sir.

6 THE COURT: Did you lift -- at one point it  
7 sounded like maybe you lifted the mattress and were looking  
8 between the mattress and the box spring, but now it seems  
9 like you lifted the entire box spring.

10 THE WITNESS: It was both, sir. I always look  
11 between the mattress and the box spring, and under the box  
12 spring, yes.

13 THE COURT: All right. And there were questions  
14 about whether there was a bed frame under the box spring,  
15 between it and the floor.

16 THE WITNESS: Yes, sir.

17 THE COURT: Would that have made any difference  
18 to you? Would you still have lifted the box spring?

19 THE WITNESS: No, sir, I would have still lifted  
20 it.

21 THE COURT: All right. I think that's all I  
22 have. All right. Thank you.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness left stand.)  
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THE COURT: I think those may be --

MR. IRVINE: They were Ms. Cornejo's.

THE COURT: Okay. The transcript is over there.  
Ms. Cornejo, any other proof?

MS. CORNEJO: No, Your Honor. We have submitted  
our witness, Agent Cogswell, and all our evidence. At this  
point the Government rests.

(Government rests.)

MR. IRVINE: No proof, Your Honor.

THE COURT: All right. Well, that's a lot  
shorter than I expected. Do you want to be heard on  
argument?

MR. IRVINE: Just briefly, Your Honor. Like I  
said at the outset, I think issue number one is pretty clear  
cut. He was going in to question Mr. Richardson --

THE COURT: Is there a mic near you?

MR. IRVINE: Do I need to speak louder?

THE COURT: Yes, sir.

MR. IRVINE: Mr. Richardson was in custody, and  
he turned on his recorder to go in and talk to him and elicit  
information from him. And the law is pretty clear that  
you've got to Mirandize him, and if you don't Mirandize him  
the statements are suppressed.

Issue two is admittedly more difficult. I think

1 it's a closer call for the Court to make, but I do think that  
2 the burden is on the Government to prove that it was made  
3 voluntarily. And I would submit that they failed to meet  
4 that burden.

5 One, we have got 43 minutes of recording --

6 THE COURT: All right. Can I ask you a quick  
7 question?

8 MR. IRVINE: Yes, Your Honor.

9 THE COURT: Set aside consent for a minute. What  
10 about if they applied for a search warrant?

11 MR. IRVINE: That doesn't cure it. You can't  
12 say, well, we could have gotten a search warrant anyway;  
13 therefore, this stuff shouldn't be suppressed.

14 THE COURT: Really?

15 MR. IRVINE: That's my understanding of the law.

16 THE COURT: Okay.

17 MR. IRVINE: Because it encourages them to do it  
18 correctly and get the search warrant. The Court's not going  
19 to look behind whether or not a search warrant would have  
20 ultimately been granted. The fact remains, they didn't get a  
21 search warrant.

22 THE COURT: All right. Well, then, so what is  
23 the standard for consent? It's voluntary; right?

24 MR. IRVINE: It's whether or not the consent was  
25 voluntary.

1 THE COURT: Okay.

2 MR. IRVINE: And I cited in my brief, it's just  
3 totality of the circumstances. The Courts look to -- and I  
4 think Ms. Cornejo cited this in her brief. The Sixth  
5 Circuit's identified a number of factors that are often  
6 relevant to the question of whether consent was voluntary,  
7 including characteristics and details of the interrogation;  
8 including the youth; his lack of education; his low  
9 intelligence; lack of any advice to the accused of his  
10 Constitutional Rights; the length of the detention; the  
11 repeated and prolonged nature of the questioning; and the use  
12 of physical punishment, such as deprivation of food and  
13 sleep. And, obviously, we don't have things like that here.

14 THE COURT: Sure.

15 MR. IRVINE: But what we do have is we know that  
16 at least for 43 minutes neither one of these people gave  
17 consent, not Ms. Niles, not Mr. Richardson.

18 In fact, we've got an acknowledgment that she  
19 specifically refused consent. You have the defendant in  
20 custody, and that weighs against the Government, although  
21 it's not dispositive, but he is in custody.

22 You have conflicting statements. On the one  
23 hand, Mr. Cogswell says, we can apply for a search warrant.  
24 The Judge doesn't have to sign it. It's totally up to you.  
25 No pressure.

1 But in almost the same breath, he comes behind  
2 that and says, we found this ammunition, we are going to  
3 search. We have to search. It doesn't matter.

4 So it's difficult to reconcile those statements.

5 THE COURT: Well, but that was -- I mean, you  
6 made a big point about the fact that they talked for  
7 43 minutes. That was at about minute number three.

8 MR. IRVINE: It is.

9 THE COURT: So, I mean, a lot was said between  
10 then and the end of the conversation. But keep going.

11 MR. IRVINE: You've got the -- and, thankfully,  
12 Agent Cogswell tried to cure it. But you've got the other  
13 marshal -- and I don't want to paraphrase this, I would like  
14 to read it.

15 THE COURT: Well, I read it.

16 MR. IRVINE: Okay.

17 THE COURT: I saw what he said. Sure.

18 MR. IRVINE: So I, respectfully, submit they  
19 hadn't met their burden of proof that it was a  
20 voluntarily-made statement.

21 And I also think it's important that that gun --  
22 I know Agent Cogswell addressed it with his testimony. But  
23 he had searched that home. He had only found a magazine.  
24 The box spring on the ground. There was a little bitty hole.  
25 And he went back in there and found the gun because of the

1 statements made by Mr. Richardson. I mean, that's how this  
2 Glock was found.

3 THE COURT: Well, okay. I understand your  
4 position.

5 MR. IRVINE: Thank you, Your Honor.

6 THE COURT: Ms. Cornejo?

7 MS. CORNEJO: First and foremost, Your Honor, I  
8 would like to address the first issue, which is, you know,  
9 the fact that the defendant was not Mirandized.

10 Your Honor is very familiar with case law, and so  
11 is counsel. I would just like to reiterate specifically that  
12 even in Miranda, the Miranda case, Your Honor, the Supreme  
13 Court held that volunteered statements of any kind are not  
14 barred by the Fifth Amendment. And, specifically, that the  
15 procedural safeguards outlined under Miranda, they are not  
16 required where a person is just taken into custody.

17 So what they're saying, specifically, is it  
18 doesn't matter whether they're in custody, but what matters  
19 is were they subject to interrogation.

20 Now, obviously, counsel and I have different  
21 views on whether this conversation that occurred was an  
22 interrogation. Correct? And that is the whole fact-finding  
23 issue that Your Honor needs to make a determination on. We  
24 submit that this was not an interrogation. You know, it's  
25 not like he was behind cell bars, and, you know, sitting



1 there with a light shining on him, and, you know, everyone --  
2 they weren't at the police station, they were at his  
3 residence, they were in his living room. And those are --

4 THE COURT: In your handcuffs.

5 MS. CORNEJO: Well, Your Honor, safety is very  
6 important to all people involved.

7 THE COURT: Okay.

8 MS. CORNEJO: But, yes, he was handcuffed and  
9 we're not disputing that. We're not disputing that at all.

10 Nonetheless, Your Honor, moving on. I know  
11 Your Honor -- in regards to the issue of voluntariness --  
12 yes?

13 THE COURT: Let me ask this question about  
14 interrogation. Whose perspective matters? In other words,  
15 is it the officer's perspective of whether they're  
16 questioning or not, or is it the defendant's perspective of I  
17 think he wants me to tell him some information.

18 MS. CORNEJO: I think it's both, honestly. I  
19 think when you're looking at the consent issue, I think the  
20 fact that --

21 THE COURT: Well, I'm talking about issue one,  
22 the statement, and whether it's interrogation or not. Is  
23 that based on the officer's intent when he goes to talk; or  
24 is it the defendant's perspective of this officer's engaging  
25 me in a conversation and so they start to tell things that

1 turn out to be incriminating?

2 MS. CORNEJO: Yes, Your Honor. I specifically  
3 have not researched that issue. But what I was trying to say  
4 was that I do think, depending on -- obviously, this is all a  
5 big -- this would be a great law school examination question;  
6 right? Because is there probable cause? Is there Miranda?  
7 You know, everything is kind of linked together.

8 And what I was trying to say was, the Miranda  
9 warnings are important when looking at whether consent was  
10 voluntary. Right? That's one of the factors I would think.  
11 And we wouldn't even be here if he was Mirandized. So the  
12 Miranda warnings, in regards to whether this was an  
13 interrogation, when analyzing consent, it is our position  
14 that at that point it is Mr. Richardson's subjective point of  
15 view.

16 But then later on, we're making arguments for  
17 inevitable discovery in good faith. And I think, Your Honor,  
18 from that perspective, in those arguments, it would then be  
19 Agent Cogswell's perspective. Right? Did he think it was an  
20 interrogation? Because then you're looking at, was  
21 Agent Cogswell -- did he act like a reasonable police  
22 officer?

23 So I just think it depends on what stage of the  
24 analysis Your Honor is looking at. But, again, I would have  
25 to do case law research on that, and maybe I'll do that next

1 weekend when I'm sitting at home.

2           Clearly, Your Honor, the voluntary issue, I'm not  
3 going to get into it. You know the factors. You have had an  
4 opportunity to listen to the audio. Agent Cogswell is very  
5 polite, very respectful. And he just tells him from the  
6 beginning, like, listen, I'm going to apply for a search  
7 warrant. And that's kind of like what the whole conversation  
8 is about.

9           I do want to point out, I believe it's page 23,  
10 starting at line 15, this is Agent Cogswell: You're welcome  
11 to follow me around, but I've got to go -- but I've got to  
12 get you to sign a piece of paper. I'll get both of y'all to  
13 sign it saying, yeah, it's okay. I wasn't pressured into  
14 this. Because I'm not pressuring you and I'm --

15           And Male Voice Two is Mr. Richardson: Nah, you  
16 not.

17           I mean, he says there, you're not pressuring me.  
18 So the consent issue goes away. Moreover, counsel did not  
19 attack Ms. Niles' apparent and actual authority.

20           I understand why this motion was filed, but at  
21 the end of the day, I don't see how anyone can get over that.  
22 Now, if she came in here and said, you know, they pointing  
23 guns at me and cursing at me and threatening to call DCFS and  
24 dadada, that would be completely different; right? Even  
25 though she's not a party, one could make the argument was her

1 will overboard. But nothing in the recording, nothing in  
2 Agent Cogswell's testimony, nothing in counsel's motion even  
3 hints at that.

4 THE COURT: So what if you throw out his consent  
5 and you've got her consent, does that cover the area?

6 MS. CORNEJO: Yes, Your Honor, absolutely it  
7 does. I can't think of a case off the top of my head, but  
8 there's --

9 THE COURT: Well, I've had cases where defendants  
10 will argue that they refused and they were adamant about  
11 refusing, but the other occupant of the residence gave  
12 consent. And the Government's argument is a reasonable  
13 officer would have relied on the other occupant, not the  
14 defendant at that point. Things along those lines can  
15 happen.

16 Mr. Irvine, I'll give you a chance to respond.  
17 Don't worry.

18 MS. CORNEJO: And, Your Honor, this was clearly a  
19 case where if you look at the totality of the circumstances,  
20 they were together. They called themselves the Richardsons.  
21 So I don't know, legally, if they were married at the time or  
22 if they were engaged. But when one starts putting themselves  
23 out as a family, one can make the assumption.

24 And Agent Cogswell made the assumption, correctly  
25 in the Government's position, that Ms. Niles had authority to

1 grant consent. It's not like he asked the kids, hey, can I  
2 look at your house? That would be unreasonable. And if  
3 Agent Cogswell brought me that case, I would just say I'm not  
4 indicting, because that would make no sense. Right?

5 But live-in girlfriend, fiancée, you know, that's  
6 par for the course. Case law is very clear. In doing the  
7 research, I know there's cases where, you know, mom gives  
8 consent through the house, even though it's a son's bedroom,  
9 things of that nature.

10 THE COURT: Sure.

11 MS. CORNEJO: And Your Honor knows our position  
12 in regards to the fact that the inevitable discovery doctrine  
13 does require speculation. Counsel is correct in that. But  
14 in this case, Agent Cogswell testified that he contacted the  
15 U.S. Attorney's Office. And he said, hey, do you think I  
16 have probable cause to get a search warrant? I saw loose  
17 ammo on the ground. This student's a convicted felon. He's  
18 been indicted for a 922(g)(1), can I get a search warrant?  
19 And he was told, yeah, go ahead, start writing it.

20 So, I mean, it's not like he's just sitting up  
21 here pontificating about, well, I think I had probable -- I  
22 mean, he really made the steps that a reasonable police  
23 officer, a reasonable law enforcement agent would make.

24 And as Your Honor pointed out, in the beginning  
25 of the audio, what's the first thing that Agent Cogswell's

1 talking about? He's like, all right, I'm going to get a  
2 search warrant. He's not -- he just tells him what he's  
3 going to do and what the next steps are. Which I hope if,  
4 you know, if there were federal agents in my house they would  
5 tell me what's going on.

6 And at the end of the day, Your Honor, the  
7 actions of Agent Cogswell were reasonable, they were lawful,  
8 they were constitutional, he treated everybody with respect.  
9 And we would ask that you deny counsel's motion to suppress.

10 THE COURT: Okay. Mr. Irvine, you were about to  
11 stand up and say something about the consent.

12 MR. IRVINE: I was, Judge, and I'm on West Law  
13 trying to make sure that I'm correct. I don't want to  
14 mislead the Court. But I don't think that it's true that one  
15 party's consent overrides another party's right to privacy.  
16 I don't think that's the law. I think the law is when the  
17 Government knows two people have a right to privacy in the  
18 same residence, that they both need to consent.

19 THE COURT: I don't think you're right about  
20 that. But go ahead.

21 MR. IRVINE: Well, that's what I was trying to  
22 look up.

23 THE COURT: Okay.

24 MR. IRVINE: And, again, I'm not certain of that.  
25 I sure thought that was the law.

1           THE COURT: Well, I'm confident that's not the  
2 law. But it depends on a lot of things, are both of them  
3 present? You know, to what level has one of them said yes or  
4 no, things like that. There are all kinds of issues with it,  
5 and considerations about it. But you don't have to get  
6 consent from both.

7           MR. IRVINE: Okay. I would --

8           THE COURT: Generally speaking. I don't want to  
9 go too far, because I'm not ruling right now. So go ahead.

10          MR. IRVINE: Well, and I'll take a look at it.

11          I do want to address, though, issue number one,  
12 because, again, that's pretty clear cut. And I think -- I  
13 don't know if the Court's had an opportunity to review the  
14 U.S. v. Murphy case that they cited in their brief.

15          But in the Murphy case, they are chasing a guy  
16 and they get him at his car and they open the car door and  
17 he's making spontaneous utterances, and he's just -- he's  
18 making incriminating statements as soon as they open the car  
19 door to take him into custody.

20          Here, we have a federal agent turning on an audio  
21 recorder to memorialize an exchange between a person in  
22 custody and law enforcement. That's quite a difference,  
23 Your Honor.

24          THE COURT: Right. So I don't know if there's a  
25 dispute about this; and if there is, we'll -- but the sense I

1 have is that Agent Cogswell and the defendant had met before.  
2 When was that? Is there a dispute about when that happened?

3 MS. CORNEJO: Would you like me to answer that  
4 question, or Agent Cogswell?

5 MR. IRVINE: I know they met. I just don't know  
6 when they met.

7 THE COURT: How long before this search warrant?

8 AGENT COGSWELL: I'm not sure, Your Honor. It  
9 had been several months.

10 THE COURT: You were in his phone as ATF dude, so  
11 I figured --

12 MS. CORNEJO: ATF dude.

13 THE COURT: -- they had met before.

14 MS. CORNEJO: They had met, Your Honor. And from  
15 my recollection, I'll proffer to the Court, that not only did  
16 they meet, but he also had spoken to Ms. Niles about  
17 Mr. Richardson cooperating with the Government. Because,  
18 obviously, that's always a big conversation that the agents  
19 have to have as far as safety and witness protection. But,  
20 yes, that's my recollection as well.

21 THE COURT: Okay. Because, I mean, they weren't  
22 stranger to one another.

23 MS. CORNEJO: No.

24 THE COURT: Okay. All right.

25 Well, interesting. And one of the other things,



1 and I'll just say this so that y'all -- I'm not ruling right  
2 now, but sometimes during conversations -- or there are cases  
3 out there, let's put it that way, where the Sixth Circuit  
4 will look at a conversation and they'll say, you know, up to  
5 this point it's not interrogation. And then after a certain  
6 point in time, maybe something is said, you know, things  
7 start to get into interrogation.

8           There are cases where it goes, you know, up to  
9 this point anything that's said from here to there, it's all  
10 fine. After this, not fine. After this, it is fine. I  
11 mean, they go so far as to take a conversation and they'll  
12 carve it up.

13           I'm not saying I'm going to do that for  
14 43 minutes, but it's -- it is at least a possibility here.

15           But interesting issue, and we've been looking at  
16 it, and we'll keep looking. What I would suggest -- when is  
17 our trial date in this case?

18           MR. IRVINE: December 5th.

19           MS. CORNEJO: It is December 5th.

20           THE COURT: Okay. So we've got a little time.  
21 What I may do, I do have a trial starting next week. So it  
22 may be two weeks or so, but we'll contact counsel and have  
23 y'all come back. Most likely I'll rule from the bench, but I  
24 may write something up.

25           MS. CORNEJO: Actually, Your Honor, I do want to

1 clarify something. The December 5th jury trial is for  
2 Count 1, which does not involve this statement. I believe in  
3 January is when the other counts, which would include this  
4 statement, would go to jury trial. So Your Honor has a  
5 little bit more time.

6 I would like the Court to know that -- I do  
7 apologize, I didn't respond in time to this motion. Because  
8 the motion's under seal, anything that's entered Mr. Irvine  
9 and I do not get. We had no idea that the October 3rd  
10 deadline had occurred. So if anything is entered for this  
11 motion --

12 THE COURT: No, I understand. And we're going to  
13 alter the way we do business. We're going to send counsel  
14 copies of things we have entered under seal.

15 MS. CORNEJO: But we had no idea. We were not  
16 trying to be disrespectful to the Court.

17 THE COURT: Oh, I know that.

18 MS. CORNEJO: We've been trying to work this out.  
19 Believe me.

20 THE COURT: I understand.

21 MS. CORNEJO: Okay.

22 THE COURT: One of the things that happens in our  
23 electronic filing system is I think there's a box you can  
24 check where it will only go to counsel, but it's not  
25 generally available to the public. And there are other ways

1 that it's not available for anyone other than the Court, and  
2 I think that's what happened when we entered the order. But  
3 we'll try to straighten that out in the future. Okay?

4 MR. IRVINE: Yes, sir.

5 THE COURT: All right. Well, thanks, everybody.  
6 We'll be in touch on a ruling. And then do we need to do  
7 anything else, any report dates or anything like that?

8 MS. CORNEJO: Should we do a report date?

9 MR. IRVINE: We could.

10 MS. CORNEJO: Yes, let's set a report date,  
11 because I think it's good to have.

12 MR. IRVINE: Well, frankly, I still owe the  
13 404(b) response.

14 MS. CORNEJO: Okay.

15 MR. IRVINE: And that could be a motion date.

16 MS. CORNEJO: Oh, that's true.

17 THE COURT: Yes, what's going on with the old res  
18 gestae --

19 MR. IRVINE: Again, I did not get a copy of the  
20 order and we didn't really talk about how much time she was  
21 asking for so -- when she filed a joint motion for both of  
22 us. So I need to get on that.

23 THE COURT: Okay. Well, how long do you need to  
24 respond to that?

25 MR. IRVINE: Two weeks. Is that okay?

1 THE COURT: Okay with me. Is that okay?

2 MS. CORNEJO: Yes, Judge. I think I know what  
3 counsel's position is.

4 THE COURT: I think I do, too.

5 MS. CORNEJO: Yes. I don't think there will be  
6 much surprise.

7 THE COURT: All right. So your response will be  
8 due October 31, and then we could have another report date  
9 maybe mid-November? I don't want to go too far in November.  
10 How about the week of the 7th? Do we have any time that  
11 week?

12 CASE MANAGER: Your Honor, Tuesday, November 8th,  
13 at 9:30 a.m.

14 THE COURT: All right. And how much leeway do we  
15 have? Because we may need some time, because I may rule at  
16 that point on this and we may end up talking about the  
17 404(b) .

18 CASE MANAGER: Your Honor, I would suggest in the  
19 afternoon, around 2:30 in the afternoon.

20 THE COURT: How's 2:30 on November 7th?

21 CASE MANAGER: November 8th, Your Honor.

22 THE COURT: I'm sorry, November 8th.

23 MS. CORNEJO: That works for the Government,  
24 Your Honor. Thank you.

25 MR. IRVINE: Works for me.

1 THE COURT: Election Day.

2 All right. November 8th it is. We'll come back  
3 and we'll see where we are. Okay.

4 MS. CORNEJO: Thank you.

5 MR. IRVINE: Thank you.

6 THE COURT: Thank, y'all.

7 CASE MANAGER: All rise. This Honorable Court  
8 stands adjourned.

9 (Adjournment at 11:44 a.m.)

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C E R T I F I C A T E

I, CATHERINE J. PHILLIPS, Fellow of the Academy of Professional Reporters, Registered Merit Reporter, Certified Manager of Reporting Services, do hereby certify that the foregoing 61 pages are, to the best of my knowledge, skill, and abilities, a true and accurate transcript from my stenotype notes of the Motion to Suppress on the 17th day of October, 2022, in the matter of:

UNITED STATES OF AMERICA

vs.

TEVIN RICHARDSON

Dated this 7th day of November, 2022.

S/ CATHERINE J. PHILLIPS, FAPR, RMR, CMRS  
Official Court Reporter  
United States District Court  
Western District of Tennessee